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SENATE

REPORT
101-168

EVERGLADES NATIONAL PARK PROTECTION AND EXPANSION ACT OF 1989

OCTOBER 18 (legislative day, SEPTEMBER 18), 1989.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 724]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 724) to modify the boundaries of the Everglades National Park and to provide for the protection of lands, waters, and natural resources within the park, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 2, line 3, strike the subsection heading and insert in lieu thereof:

SEC. 101. FINDINGS, PURPOSES AND DEFINITION OF TERMS.

2. On page 3, after line 24, at the end of section 101, insert:

(c) DEFINITIONS.—As used in this Act:

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "addition" means the approximately 107,600 acre area of the East Everglades area authorized to be added to Everglades National Park by this Act.

(3) The term "park" means the area encompassing the existing boundary of Everglades National Park and the addition area described in paragraph (2).

(4) The term "project" means the Central and Southern Florida Project.

3. On page 4, lines 2 through 10, strike all of subsection (a) and insert in lieu thereof:

S313-32

(a) AREA INCLUDED.—The park boundary is hereby modified to include approximately 107,600 acres as generally depicted on the map entitled "Boundary Map, Everglades National Park Addition, Dade County, Florida", numbered 160–20,013B and dated September, 1989. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

4. On page 4, lines 11 and 12, strike "of the Interior (in this Act referred to as the 'Secretary')".

5. On page 8, after line 21, at the end of title I, insert:

SEC. 104. MODIFICATION OF CERTAIN WATER PROJECTS.

(a) IMPROVED WATER DELIVERIES.—(1) The Secretary of the Army, in consultation with the Secretary, is authorized and directed to construct modifications to the Central and Southern Florida Project to improve water deliveries into the park and shall, to the extent practicable, take steps to restore the natural hydrological conditions within the park.

(2) Such modifications shall be based upon the findings of the Secretary's experimental program authorized in section 1302 of the 1984 Supplemental Appropriations Act (97 Stat. 1292) and generally as set forth in a General Design Memorandum to be prepared by the Jacksonville District entitled "Modified Water Deliveries to Everglades National Park". The Draft of such Memorandum and the Final Memorandum, as prepared by the Jacksonville District, shall be submitted as promptly as practicable to the Committee on Energy and Natural Resources and the Committee on Environment and Public Works of the United States Senate and the Committee on Interior and Insular Affairs and the Committee on Public Works and Transportation of the United States House of Representatives.

(3) Construction of project modifications authorized in this subsection and flood protection systems authorized in subsections (c) and (d) are justified by the environmental benefits to be derived by the Everglades ecosystem in general and by the park in particular and shall not require further economic justification.

(4) Nothing in this section shall be construed to limit the operation of project facilities to achieve their design objectives, as set forth in the Congressional Authorization and any modifications thereof.

(b) DETERMINATION OF ADVERSE EFFECT.—(1) Upon completion of the Final Memorandum referred to in subsection (a), the Secretary of the Army, in consultation with the South Florida Water Management District, shall make a determination as to whether the residential area within the East Everglades known as the "Eight and One-Half Square Mile Area" or adjacent agricultural areas, all as generally depicted on the map referred to in subsection 102(a), will be adversely affected by project modifications authorized in subsection (a).

(2) In determining whether adjacent agricultural areas will be adversely affected, the Secretary of the Army shall consider the impact of any flood protection system proposed to be implemented pursuant to subsection (c) on such agricultural areas.

(c) FLOOD PROTECTION; EIGHT AND ONE-HALF SQUARE MILE AREA.—If the Secretary of the Army makes a determination pursuant to subsection (b) that the "Eight and One-Half Square Mile Area" will be adversely affected, the Secretary of the Army is authorized and directed to construct a flood protection system for that portion of presently developed land within such area.

(d) FLOOD PROTECTION; ADJACENT AGRICULTURAL AREA.—(1) If the Secretary of the Army determines pursuant to subsection (b) that an adjacent agricultural area will be adversely affected, the Secretary of the Army is authorized and directed to construct a flood protection system for such area. Such determination shall be based on a finding by the Secretary of the Army that:

(A) the adverse effect will be attributable solely to a project modification authorized in subsection (a) or to a flood protection system implemented pursuant to subsection (c), or both; and

(B) such modification or flood protection system will result in a substantial reduction in the economic utility of such area based on its present agricultural use.

(2) No project modification authorized in subsection (a) which the Secretary of the Army determines will cause an adverse effect pursuant to subsection (b) shall be made operational until the Secretary of the Army has implemented measures to prevent such adverse effect on the adjacent agricultural area: *Provided,* That the Secretary of the Army or the South Florida Water Management District may operate the modification to the extent that the Secretary of the Army determines that such operation will not adversely affect the adjacent agricultural area: *Provided further,* That any preventive measure shall be implemented in a manner that presents the least prospect of harm to the natural resources of the park.

(3) Any flood protection system implemented by the Secretary of the Army pursuant to this subsection shall be required only to provide for flood protection for present agricultural uses within such adjacent agricultural area.

(4) The acquisition of land authorized in section 102 shall not be considered a project modification.

(e) PERIODIC REVIEW.—(1) Not later than 18 months after the completion of the project modifications authorized in subsection (a), and periodically thereafter, the Secretary of the Army shall review the determination of adverse effect for adjacent agricultural areas.

(2) In conducting such review, the Secretary of the Army shall consult with all affected parties, including, but not limited to, the Secretary, the South Florida Water Man-

agement District and agricultural users within adjacent agricultural areas.

(3) If, on the basis of such review, the Secretary of the Army determines that an adjacent agricultural area has been, or will be adversely affected, the Secretary of the Army is authorized and directed, in accordance with the provisions of subsection (d), to construct a flood protection system for such area: *Provided,* That the provisions of subsection (d)(2) shall not be applicable to a flood protection system implemented pursuant to such review.

(4) The provisions of this subsection shall only be applicable if the Secretary of the Army has previously made a determination that such adjacent agricultural area will not be adversely affected.

(f) CURRENT CANAL OPERATING LEVELS.—Nothing in this section shall be construed to require or prohibit the Secretary of the Army or the South Florida Water Management District from maintaining the water level within any project canal below the maximum authorized operating level as of the date of enactment of this Act.

(g) NO LIMITATION ON OTHER CLAIMS.—If the Secretary of the Army makes a determination of no adverse effect pursuant to subsection (b), such determination shall not be considered as a limitation or prohibition against any available legal remedy which may otherwise be available.

(h) COORDINATION.—The Secretary and the Secretary of the Army shall coordinate the construction program authorized under this section and the land acquisition program authorized in section 102 in such manner as will permit both to proceed concurrently and as will avoid unreasonable interference with property interests prior to the acquisition of such interests by the Secretary under section 102.

(i) WEST DADE WELLFIELD.—No Federal license, permit, approval, right-of-way or assistance shall be granted or issued with respect to the West Dade Wellfield (to be located in the Bird Drive Drainage Basin, as identified in the Comprehensive Development Master Plan for Dade County, Florida) until the Secretary, the Governor of the State of Florida, the South Florida Water Management District and Dade County Florida enter into an agreement providing that the South Florida Water Management District's water use permit for the wellfield, if granted, must include the following limiting conditions: (1) the wellfield's peak pumpage rate shall not exceed 140,000,000 gallons per day; (2) the permit shall include reasonable, enforceable measures to limit demand on the wellfield in times of water shortage; and (3) if, during times of water shortage, the District fails to limit demand on the wellfield pursuant to (2), or if the District limits demand on the wellfield pursuant to (2), but the Secretary certifies that operation of the wellfield is still causing significant adverse impacts on the resources of the Park, the Governor shall require the South Florida Water Management District to take neces-

sary actions to alleviate the adverse impact, including, but not limited to, temporary reductions in the pumpage from the wellfield.

(j) PROTECTION OF NATURAL VALUES.—The Secretary of the Army is directed in analysis, design and engineering associated with the development of a general design memorandum for works and operations in the "C–111 basin" area of the East Everglades, to take all measures which are feasible and consistent with the purposes of the project to protect natural values associated with Everglades National Park. Upon completion of a general design memorandum for the area, the Secretary shall prepare and transmit a report to the Committee on Energy and Natural Resources and the Committee on Environment and Public Works of the United States Senate and the Committee on Interior and Insular Affairs and the Committee on Public Work and Transportation of the United States House of Representatives on the status of the natural resources of the C–111 basin and functionally related lands.

PURPOSE OF THE MEASURE

The purpose of S. 724, as amended, is to authorize the addition of approximately 107,500 acres within the area known as the East Everglades into Everglades National Park, and to authorize modifications to the Central and Southern Florida Project to provide for improved water deliveries into the park.

BACKGROUND AND NEED

Everglades National Park was established in 1947 and is the second largest national park in the lower 48 States. The park contains approximately 1.4 million acres of cypress, pine and mangrove forests, sawgrass prairies, fresh water sloughs and salt marshes, almost 1.3 million of which are designated as wilderness. The Everglades has been designated as a World Heritage site, an International Biosphere Reserve and a Wetland of International Importance by the United Nations. The park provides habitat for many endangered or threatened species, including the Florida Panther, American Crocodile, Wood Stork, Cape Sable Sparrow and Snail Kite.

The approximately 107,500 acres of the East Everglades area to be added to the park by this legislation will substantially enlarge vital animal habitat areas. The area contains the primary home range for five Florida Panthers, including the only male panther known to inhabit the park. Because of the panthers' requirement for large, undisturbed areas, acquisition of this area is considered crucial to their survival.

Beginning with Congressional authorization of the Central and Southern Florida Flood Control Project in 1948, Everglades National Park has become dependent upon the project's complex system of levees, dams and canals to provide the water deliveries necessary to maintain the park's ecosystem. In addition, the increasing water demands of the greater Miami area, with a population in

excess of 3.5 million, constitutes an additional threat to the park's water supply.

Historically, water has flowed gradually from the Lake Okeechobee basin in a southwesterly direction through the Everglades, into Florida Bay and the Gulf of Mexico. Most of the water enters the park through the Shark River Slough, which varies in width from 5 to 20 miles. When Everglades National Park was established, only half of the slough was encompassed in the park boundary, with the northeast half remaining outside of the park in an area known as the East Everglades. This legislation will place all of the Shark River Slough inside the park boundary.

During the rainy season, from April through October, water levels rise to the edges of the slough. During the drier winter months, the water recedes toward the center of the slough, allowing the edges of the slough to gradually dry out. This naturally occurring ebb and flow is crucial to the survival of much of the region's wildlife.

In 1962, the Army Corps of Engineers modified the water flow into the slough at the northern edge of the park. A levee was constructed through the middle of the slough to increase the water storage level in one of the South Florida Water Management District's water Conservation Areas, which are used to provide water for residential and agricultural purposes.

This modification redirected the natural water flow, so that the western half of the slough, which had traditionally carried 40 percent of the slough's water flow, instead received 90 percent of the entire flow. Meanwhile, the flow through the eastern portion of the slough, the half in the East Everglades outside of the park boundary—which historically carried 60 percent of the entire slough's flow—was reduced to only 10 percent. This left the western half of the slough constantly flooded while the eastern portion became too dry.

The disruption of the Shark River Slough's water flow has resulted in the habitat loss and population decline of many native species. According to the National Park Service, the population of wading birds in the Everglades has decreased by approximately 90 percent since the 1930's. The Roseate Spoonbill population has decreased by 50 percent in the past decade and the Wood Stork has lost 80 percent of its population over the past 20 years. The high water levels in the northwest part of the slough resulted in the flooding and destruction in 1988 of almost half of the alligator nests.

The sawgrass and grass marshes found within the East Everglades area provide important nesting and feeding habitat for two other endangered species, the Cape Sable Sparrow and the Wood Stork. The loss of this habitat through increased development has been one of the principal reasons for the decline in the sparrow population.

Currently, the Park Service estimates that only 500 pairs of Wood Storks remain in the park. The proposed addition represents almost 35 percent of the storks' feeding habitat. When natural water flows were diverted from the eastern half of the slough, this area became unsuitable as a major food source. Restoration of the

water flow through out the entire width of the slough will enable this area to once again be used as a major feeding area.

Restoration of natural water flows will also allow fish populations to return to normal levels. Currently, some areas within the slough have as few as 20 percent of fish populations in areas where the natural water flow has not been altered.

The land to be added to the park by this legislation generally reflects the recommendation of a bipartisan task force established in 1988 by Florida Governor Bob Martinez. In addition, the bill as reported will allow the restoration of natural water flows through the entire width of the Shark River Slough.

LEGISLATIVE HISTORY

S. 724 was introduced by Senator Graham on April 6, 1989. Senator Mack was added as a cosponsor on May 9, 1989. The Subcommittee on Public Lands, National Parks and Forests held a hearing on S. 727 on June 20, 1989.

At the business meeting on August 2, 1989, the Senate Committee on Energy and Natural Resources ordered S. 724, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural resources, in open business session on August 2, 1989, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 724, if amended as described herein.

COMMITTEE AMENDMENTS

During the consideration of S. 724, the Committee adopted five amendments.

Amendments 1 and 2 are clarifying amendments which combine the definitions of certain terms used throughout the bill into one subsection.

Amendment 3 updates the description of the map referenced in section 102(a). The new map reflects three changes from the original map. First, the Airboat Association of Florida's clubhouse, consisting of approximately 10 acres, was removed from the area to be added to the park.

Secondly, the new map excludes three agricultural parcels from the area to be added to the park, totaling approximately 155 acres. These three parcels consist of a 86-acre citrus grove, a 55-acre field and a 15-acre citrus grove. All three parcels are located within an area between the eastern boundary of the land to be donated by the State, Canal L31–N, Southwest 248th Street and Southwest 232nd Street.

Finally, the map depicts the "Eight and One-Half Square Mile Area" (a nearby residential area) and "Adjacent Agricultural Areas" which are referred to in section 104 of the bill.

Amendment 4 is a conforming amendment to strike the definition of a term defined in subsection 101(c) pursuant to amendment 2.

Amendment 5 authorizes and directs the Secretary of the Army to modify the Central and Southern Florida Project to improve

water deliveries into Everglades National Park, and to the extent practicable, to restore the natural hydrological conditions of the park.

The Army Corps of Engineers is currently preparing a General Design Memorandum (GDM) detailing the procedure for restoring water flows through the Northeast Shark River Slough. The amendment requires that any project modifications must be implemented in general compliance with the GDM.

Upon completion of the GDM, and prior to the construction of any project modifications, the Secretary of the Army is to make a determination as to whether the "Eight and One-Half Square Mile Area" (the "residential area") or "adjacent agricultural areas" will be adversely affected by the project modifications. In determining whether adjacent agricultural areas will be adversely affected, the Secretary of the Army is to consider the effect of any flood protection system proposed to be implemented for the residential area.

The amendment does not set forth any criteria for determining what constitutes an adverse effect; rather, it is the view of the Committee that the Secretary of the Army, after completing the GDM, will be best able to make such a determination and establish the proper criteria. The Committee recognizes that the Secretary of the Army may take several factors into consideration in making this determination, such as increased surface or canal water levels, higher groundwater levels, frequency and duration of flooding, among others.

In answers to questions submitted at the hearing on S. 724, the Army Corps of Engineers has indicated that it expects that the residential area will receive some flooding as a result of the project modifications. The Corps has also informed the Committee that it does not expect the project modifications to result in any adverse effects to adjacent agricultural areas.

With respect to adjacent agricultural areas, the Secretary of the Army is authorized to implement a flood protection system for areas determined to be adversely affected if two conditions are satisfied. First, the Secretary of the Army must determine that the adverse effect will be attributable solely to a project modification or the residential flood protection system authorized by this amendment. Secondly, the Secretary of the Army must determine that the project modification or flood protection system will result in a substantial reduction in the economic utility of the agricultural area, based on its present agricultural use.

The Committee notes that the first requirement, that an adverse effect must be solely attributable to a project modification or residential flood protection system, does not necessarily require that all damage must be solely caused by project modifications. If the Secretary of the Army determines that a condition, by itself, constitutes an adverse effect, then only that condition must be solely attributable to project modifications in order to satisfy this requirement. For example, a project modification may cause an increase in groundwater levels, but not to the extent that property or crops are damaged. However, if increased groundwater levels in combination with ordinary rainfall or flooding events results in damage which otherwise would not have occurred, then the Secretary of

the Army may consider that the increase in groundwater levels, resulting solely from a project modification, is itself an adverse effect.

The second test requires that the Secretary of the Army must find that the adverse effect will result in a substantial reduction in the economic utility of the land based on its present agricultural use. While the final determination as to what level of harm constitutes a "substantial reduction" is left to the discretion of the Secretary of the Army, the Committee expects that the Secretary of the Army will use reasonable judgment in considering the cost of building a flood protection system as compared to the amount of damage which may be incurred as a result of the adverse effect, and the availability of other legal remedies.

This second requirement takes into account the present agricultural use of an adjacent agricultural area. The Committee intends that this standard should be based on the current type of crops grown within each agricultural parcel, taking into consideration seasonal crop variations. The Committee understands that certain crops are much more sensitive to increased groundwater levels than others and that ground and surface water levels vary from season to season. It is the Committee's view that damage resulting because of a change from current operating practices in crop growing patterns or an increase in the number of annual planting seasons should not result in a requirement that the adjacent agricultural area be provided with flood protection.

If the Secretary of the Army has made a determination that an adjacent agricultural area will be adversely affected, then the project modification causing the harm is to be made operational only to the extent that the adverse effect is avoided, until the affected area is protected. However, the operation of other project modifications not causing the adverse effect, and the acquisition of lands, are not to be impeded.

The Committee recognizes that conditions may change after the Secretary of the Army has determined that adjacent agricultural areas will not be adversely affected by the project modifications. The amendment provides that not later than 18 months after completion of the project modifications and periodically thereafter, the Secretary of the Army is to review his initial determination. While the timing of the periodic reviews is at the discretion of the Secretary of the Army, the Committee expects that such periodic reviews shall occur no longer than 5 years apart. If on the basis of the review, the Secretary of the Army determines that an adjacent agricultural area will be or has been adversely affected, then he shall implement a flood protection system as provided during the initial determination. However, the Secretary of the Army may continue to operate project facilities while a flood protection system is implemented.

Dade County is currently planning to operate a major wellfield near the northeastern boundary of the addition area to provide water for Miami. The Committee understands that once normal operation begins, the wellfield's cone of influence will extend into the park. The amendment provides that no Federal license or permit is to be issued until local authorities have agreed to operating guidelines which will limit the amount of water pumped from the wellfield during times of drought.

SECTION-BY-SECTION ANALYSIS

Section 1 entitles the Act the "Everglades National Park Protection and Expansion Act of 1989".

Title I

Section 101 contains the Congressional findings and purposes, and defines certain terms used in the bill.

Section 102 establishes the boundary modification and land acquisition procedures for adding the East Everglades area to the park.

Subsection (a) provides that the boundary of Everglades National Park is to be modified to include approximately 107,500 acres as depicted on National Park Service Map 160–20,013B, dated September, 1989.

Subsection (b) authorizes the Secretary of the Interior (the Secretary) to make minor adjustments in the park boundary from time to time in accordance with section 7(c) of the Land and Water Conservation Fund Act of 1965.

Subsection (c) states that the Secretary may acquire lands and interests in lands within the addition area by donation, purchase, or exchange. The subsection also authorizes the exchange of approximately one acre of land known as "Gilberts' Marina" for non-Federal land of equal value located within the addition area. The Committee understands that this exchange will resolve a non-intentional trespass on wilderness within the park that has existed for the past 12 years.

Paragraph (2) states that the acquisition authority will remain in effect until all acquisitions are completed, and that it is the intent of Congress that all acquisitions shall be completed within 5 years after the date of enactment of the Act.

Subsection (d) permits the Secretary to acquire all or any portion of land where such land is only partly within the area to be added to the park, in order to minimize the payment of severance costs. Any property acquired which is outside of the addition may be exchanged for non-Federal lands within the addition or disposed of pursuant to the Federal Property and Administrative Services Act of 1949.

Subsection (e) provides that the Secretary shall give prompt and careful consideration to any offer to sell by any person owning property within the addition area, if the owner indicates that continued ownership is causing or would result in undue hardship.

Subsection (f) authorizes the appropriation of such sums as may be necessary to carry out the provisions of the Act. Paragraph (2) provides that the Federal Government may provide no more than 80 percent of the land acquistion costs and the State of Florida may not provide less than 20 percent of such costs. The National Park Service estimates that the Federal costs in acquiring the 65,000 acres of private property will be approximately $32 million. In addition, the State of Florida will donate approximately 43,000 acres of land valued at $22.2 million.

Subsection (g) authorizes the Secretary to provide technical assistance and personnel to assist the State of Florida in the acquisition of lands within the Kissimmee River-Lake Okeechobee-Ever-

glades-Big Cypress Hydrologic Basin. The State will be required to reimburse the Secretary for any services rendered at an amount agreed upon by the Secretary and the State.

Section 103 provides that the park shall be managed in accordance with the 1916 Organic Act and other applicable laws.

Subsection (b) directs the Secretary to manage the park in a manner to maintain the natural abundance, diversity, and ecological integrity of native plants and animals.

Subsection (c) maintains the prohibition on the use of airboats within the park. However, registered airboat owners as of January 1, 1989 are to be issued nontransferable lifetime permits to continue to operate airboats within designated routes in the East Everglades addition area in accordance with rules promulgated by the Secretary to protect the biological resources of the area.

Subsection (d) authorizes the Secretary to enter into concession contracts with existing commercial airboat operators located within the proposed addition area.

Subsection (e) directs the Secretary to construct a visitor center at Everglades City, Florida and to designate the facility as "The Marjory Stoneman Douglas Center."

Section 104 details the procedures for improving water deliveries into the park, sets forth contingent flood protection measures for a nearby residential area and adjacent agricultural areas, and establishes pumpage guidelines for a water wellfield proposed to be implemented near the park.

Subsection (a) authorizes and directs the Secretary of the Army, in consultation with the Secretary, to modify the Central and Southern Florida Project (the project) to improve water deliveries into the park, and to the extent practicable, to take steps to restore the natural hydrological conditions within the park. The project modifications are to be made in accordance with a General Design Memorandum currently being prepared by the Army Corp of Engineers' Jacksonville, Florida District.

Paragraph (3) states that any project modifications and flood control measures implemented are justified by the environmental benefits to be derived by the Everglades ecosystem and Everglades National Park.

Subsection (b) directs the Secretary of the Army to make a determination as to whether a nearby residential area known as the "Eight and One-Half Square Mile Area" and adjacent agricultural areas will be adversely affected by the project modifications authorizes in subsection (a).

Paragraph (2) directs the Secretary of the Army to consider the effect of any flood control system implemented for the "Eight and One-Half Square Mile Area" in determining whether adjacent agricultural areas will be adversely affected.

Subsection (c) authorizes the Secretary of the Army to implement a flood protection system for that portion of presently developed areas within the "Eight and One-Half Square Mile Area"if he determines that such area will be adversely affected.

Subsection (d) authorizes the Secretary of the Army to implement a flood protection system for an adjacent agricultural area if the Secretary of the Army determines that such area will be adversely affected by the project modifications or a flood protection

system implemented pursuant to subsection (c). The Corps may only construct a flood control system if the Secretary of the Army first determines that the adverse effect will be attributable solely to a project modification authorized in subsection (a) or a flood protection sytem implemented pursuant to subsection (c), and secondly, that the project modification or flood protection system will result in a substantial reduction in the economic utility of the area based on its present agricultural use.

Paragraph (2) prohibits the Secretary of the Army from making any project modification operational if the Secretary of the Army determines that the modification will cause an adjacent agricultural area to be adversely affected. However, the Secretary of the Army may operate the modification to the extent that he determines that the operation will not cause the adverse effect. The paragraph also states that any preventive measures must be implemented in a manner that will cause the least prospect of harm to the park.

Paragraph (3) makes clear that any flood protection system implemented for an adjacent agricultural area only need to be constructed to provide for flood protection for present agricultural uses within the agricultural area.

Paragraph (4) states that the acquisition of land authorized in section 102 is not to be considered as a project modification.

Subsection (e) provides for periodic review by the Secretary of the Army of his determination of adverse effect with respect to adjacent agricultural areas. The Secretary of the Army is to conduct the initial review within 18 months after the completion of the project modifications, and periodically thereafter. In reveiwing the determination, the Secretary of the Army is to consult with the Secretary of the Interior, the South Florida Water Management District and agricultural users within adjacent agricultural areas.

Paragraph (3) authorizes the Secretary of the Army to implement a flood protection sysetm for an adjacent agricultural area if, on the basis of his review, he determines that an adjacent agricultural area will be, or has been adversely affected. However, the Secretary of the Army is not required to stop operation of a project modification during construction of the flood protection system.

Finally, the subsection states that the Secretary of the Army is only required to conduct a review for those adjacent agricultural areas that he has previously determined will not be adversely affected.

Subsection (f) provides that nothing in section 104 shall be construed to require or prohibit the Secretary of the Army or the South Florida Water Management District from maintaining the water level within any project canal at a level below the maximum authorized operating level as of the date of enactment of this Act. The Committee notes that the current maximum authorized operating level in the two project canals adjacent to the park is 4.5 feet in canal L31–W, and 6.0 feet in canal L31–N.

Subsection (g) makes clear that a determination of no adverse effect by the Secretary of the Army shall not be considered as limitation against any otherwise available legal remedy.

Subsection (h) directs the Secretary of the Interior and the Secretary of Army to coordinate the land acquisition and project modifi-

cation programs to permit both to proceed concurrently and to avoid unreasonable interferences with property interests in lands that will be acquired pursuant to this legislation.

Subsection (i) provides that no Federal license, permit, approval, right-of-way or assistance shall be granted with respect to the West Dade Wellfield unless certain operating guidelines are maintained. This wellfield, which will be located just northwest of the area to be added to the park, will be used to supply part of Miami's water supply. Specifically, the subsection requires that the South Florida Water Management District limit operation of the wellfield during times of drought. The Committee understands that even with these guidelines, operation of the wellfield may adversely affect hydrological conditions within the park.

Subsection (j) requires the Secretary of the Army, in preparing a GDM for an area bordering the park known as the "C–111 basin," to take all feasible measures which are consistent with the purposes of the Central and Southern Florida Project to protect natural values of the basin associated with Everglades National Park. The subsection also directs the Secretary of the Army, upon completion of the GDM, to prepare and transmit a report to the appropriate Congressional Committees on the status of the natural resources of the C–111 basin.

Title II

Section 201 directs the Secretary of the Interior to prepare a suitability and feasibility study to consider expanding and redesignating Fort Jefferson National Monument as a National Park. The study is to be completed within 2 years and is to be transmitted to the Senate Energy and Natural Resources Committee and the House Interior and Insular Affairs Committee.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 11, 1989.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 74, the Everglades National Park Protection and Expansion Act of 1989.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 724.

2. Bill title: Everglades National Park Protection and Expansion Act of 1989.

3. Bill status: As ordered reported by the Senate Committee on Energy and Natural Resources, September 27, 1989.

4. Bill purpose: S. 724 would modify the boundary of the Everglades National Park to include approximately 108,000 additional acres. The bill would authorize the Secretary of the Interior to acquire land within the addition by donation, purchase or exchange; land owned by state or local governments could only be acquired by donation. Such sums as may be necessary would be authorized for this purpose, provided that the State of Florida contribute 20 percent to any purchases of private land. The addition would be administered by the National Park Service.

Section 104 of the bill would require the U.S. Army Corps of Engineers to modify the Central and Southern Florida Project in order to improve water deliveries into the park. This section would also authorize related flood protection activities if needed.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1990	1991	1992	1993	1994
Estimated Authorization Level	76.1	0.6	0.8	0.9	1.0
Estimated Outlays	13.1	19.6	23.5	16.7	6.5

The costs of this bill fall within budget functions 300 and 800.

Baiss of Estimate: For purposes of this estimate, it is assumed that the full amounts estimated to be necessary will be appropriated for each fiscal year. For fiscal year 1990, the estimated authorization level includes $50 million for construction projects to be carried out by the Corps and $25.6 million for the federal share of land acquisition costs. (Total land acquisition costs are estimated to be about $32 million, of which the state would have to pay at least 20 percent.) Other costs, including park operations, payments in lieu of taxes, and the feasibility study required by Title II, are estimated to be $0.5 million in 1990, increasing to $1.0 million by 1994. These costs have been estimated on the basis of information obtained from the National Park Service and the Corps of Engineers. Projected outlays are based on historical experience for similar projects.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: On July 19, 1989, CBO prepared a cost estimate for H.R. 1727, the Everglades National Park Protection and Expansion Act of 1989, as ordered reported by the House Committee on Interior and Insular Affairs, June 21, 1989. The estimated costs of the two bills are the same.

9. Estimate prepared by: Deborah Reis.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 724. The bill is not a regulatory measure in the sense of imposing Government-estimated standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 724, as reported.

EXECUTIVE COMMUNICATIONS

On May 22, 1989, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth executive views on S. 724. These reports had not been received at the time the report on S. 724 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. On September 1, 1989, the Committee received the views of the Department of the Army, which are printed below. The testimony provided by the National Park Service at the Subcommittee hearing follows:

DEPARTMENT OF THE ARMY,
Washington, DC, August 30, 1989.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Department of the Army wishes to submit its views on S. 724, 101st Congress, a bill "To modify the boundaries of the Everglades National Park and to provide for the protection of lands, waters, and natural resources within the park, and for other purposes." The Department of the Army will be expressing the views of the Department of Defense on this matter.

The Department of the Army urges swift enactment of S. 724 if it is amended to authorize certain construction measures necessary to achieve the bill's purpose of restoring water flows to Everglades National Park (ENP). Such restoration requires a two-fold solution consisting of (1) modification of existing structures and operating plans to prmit improved delivery of water to the ENP; and (2) protection or acquisition of the lands that would be flooded as a result of such modifications. S. 724 addresses the acquisition part. However, water delivery is equally critical to the protection and enhancement of wildlife habitat, and S. 724 would not provide authority for modifying the Central and Southern Florida project to improve water delivery.

By way of background, Section 2 of the River Basin Monetary Authorization and Miscellaneous Civil Works Amendments Act of 1970, Public Law 91-282, specifies, in pertinent part, that "delivery of water from the Central and Southern Florida project to the Everglades National Park shall be not less than 315,000 acre-feet annually, prorated according to the monthly schedule set forth in the

National Park Service letter of October 20, 1967, to the Office of the Chief of Engineers, or 16.5 per centum of total delivered from the project for all purposes including the park, whichever is less." Subsequent dissatisfaction with these statutory delivery requirements resulted in the enactment of Section 1302 of the Supplemental Appropriations Act, 1984, Public Law 93-181, which enabled the Department of the Army to set aside temporarily the statutory delivery requirements in favor of a two-year experimental program for the purpose of determining an improved schedule for the delivery of water from the Central and Southern Florida project to the ENP. Subsequent amendments to this experimental program have extended its expiration date to January 1, 1992, when, unless further amended, the affected water delivery requirements would return to those mandated in the aforementioned 1970 statute.

S. 724, as introduced, would authorize the land acquisition that would be necessary to expand the ENP and to allow improved flows to be made from the Central and Southern Florida project to restore the ENP. However, it should be amended to authorize the Secretary of the Interior to undertake attendant construction requirements for water flow and other necessary measures, including measures to mitigate the effects of induced flooding, with the Secretary of the Interior providing funds to the Secretary of the Army to construct the facilities. It should also be amended to authorize the Secretary of the Army, in consultation with the Secretary of the Interior and Governor of Florida, to modify the operation of the Central and Southern Florida project to improve the project's delivery of water to the ENP while carrying out other congressionally authorized functions.

It is essential that the Secretary of the Army retain responsibility to operate the Central and Southern Florida project. While the project can serve to accomplish the purpose of S. 724, it is a complex management system that provides flood control; municipal, industrial, and agricultural water supply; prevention of salt water intrusion; and enhancement of fish and wildlife resources. However, the Administration believes it is important that the Secretary of the Interior be authorized to fund the necessary physical project improvements along with the land acquisition required to sustain the ENP. As you are aware, the Army's Civil Works contruction program is directed at funding new projects which produce net economic development benefits and which provide primarily flood damage reduction or commercial navigation benefits. Improvements to the Central and Southern Florida project directed at protecting and preserving the ENP would not meet these criteria. As a result, the needed improvements could be delayed significantly if they were required to compete for funds with projects that meet the established criteria.

If the Secretary of the Interior were given both land acquisition and project construction authority, ENP-related land acquisition would not have to compete for new appropriations in two separate programs, thereby avoiding the conflicting priorities and possible delays inherent in multiple budget and appropriation reviews. If the ENP project proposed in S. 724 were included in the Interior program, the project would need to compete only once, and with similar projects. The Administration believes this approach would

permit the fastest possible resolution of the Everglades' critical problems.

We further recommend that S. 724 be amended to require appropriate Federal/non-Federal cost sharing of both land acquisition and project construction costs. The bill as introduced would apportion 80 percent of the cost of acquiring private lands to the Federal Government and only 20 percent to the State. The Everglades are extremely important to both the economy and the quality of life of South Florida, benefitting tourism, commercial fishing, and recharging the Biscayne aquifer that provides drinking water. The Administration therefore believes it would be equitable, and appropriate in a time of severe Federal fiscal constraints, for the State or other non-Federal entities to assume at least 50 percent of private land acquisition costs and 50 percent of costs of constructing project works needed to restore water flows to ENP.

If S. 724 is amended as discussed above, the Department of the Army offers no objection to the bill. We would be pleased to work with committee staff to develop appropriate amendatory language.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Office of Management and Budget advises that there is no objection to the submission of this report for the consideration of the Committee, and that enactment of S. 724, if amended as discussed above, would be in accord with the President's program.

Sincerely,

MORGAN R. REES,
(For Robert W. Page,
Assistant Secretary of the Army (Civil Works))

STATEMENT OF JOHN M. MOREHEAD, ASSOCIATE DIRECTOR FOR OPERATIONS, CONCERNING S. 724, A BILL TO MODIFY THE BOUNDARIES OF THE EVERGLADES NATIONAL PARK AND TO PROVIDE FOR THE PROTECTION OF LANDS, WATERS, AND NATURAL RESOURCES WITHIN THE PARK, AND FOR OTHER PURPOSES

Mr. Chairman, I appreciate this opportunity to provide your Subcommittee with testimony on S. 724, a bill to expand and further protect Everglades National Park.

Mr. Chairman, we urge swift enactment of the bill if it is amended as I will describe later in my testimony. Specifically, we endorse the bill's addition of 110,000 acres to the National Park System in South Florida; we endorse the need to provide enhanced protection to Everglades National Park; and we endorse the establishment of a Federal/State partnership for land acquisition. The amendments we propose will enable us to more quickly reach the resource protection and stewardship goals we share with the State and with the sponsors of the legislation.

The Committee should be aware that restoration of water flows to the park requires a two-fold solution: Modification of existing structures and operating plans that currently control the delivery of water to the park; and ac-

quisition of the lands that would, as a result, be flooded. S. 724 addresses the acquisition part. The Congress will need to address the water management portion through appropriate authorizations preferably in this legislation. The Administration's support for S. 724 is contingent upon this issue being resolved, because acquisition of the additional land for the park will accomplish little or nothing in terms of protecting and enhancing wildlife habitat—unless the natural flow of water to this area can be restored. Finally, we note that there are important issues regarding the quality of water entering the park, as well as the quantity of water.

The Federal government has a long standing commitment to resource protection in South Florida. The Department of the Interior's two chief preservation-oriented land managing bureaus—the National Park Service and the Fish and Wildlife Service—together manage 9 separate units totalling 2,097,600 million acres of Federal land. The Department has supported substantial additions to both our parks and our refuges in recent years; this includes the creation of a new Florida Panther Wildlife Refuge, a new Ten Thousand Island Wildlife Refuge, expansion of the Key Deer Refuge, and a 128,000 acre expansion of Big Cypress National Preserve. This aggressive expansion program has resulted in the commitment of more than $57 million for the acquisition of Federal Conservation lands to protect important resources in South Florida.

We see further opportunity to work jointly with the State to protect South Florida's nationally significant resources for this and future generations of Americans. And we are prepared to act in concert with Congress in doing it. Everglades National Park is the second largest national park in the lower 48 States. It includes pine forests, cypress forests, sawgrass prairies, fresh water rivers, spectacular beaches, and pristine estuaries. The park, established in 1947, has achieved both national and international recognition. It has been designated a World Heritage Site and an International Biosphere Reserve by the United Nations, and a Wetland of International Importance by its Convention on Wetlands. It is home to 13 endangered species.

Located 35 miles from Miami, and within 65 miles of 3.5 million people, the park plays a significant role in the economy and quality of life in South Florida. The wetlands within the park serve to recharge the Biscayne aquifer that provides drinking water for South Florida. These same wetlands nourish and sustain the unique wildlife populations within the park which range from the American crocodile and West Indian manatee to the Florida panther and endangered woodstork. In addition, these wetlands nourish and sustain the marvelous estuaries on the Gulf coast and in Florida Bay which directly benefit and support commercial fishing interests and harvests outside the park at an estimated $100 million a year.

The park in under severe stress, due to land use and water management practices external to the park. For example, current populations of wading birds, such as woodstork, herons, ibis, and egret, are at less than 10 percent of historic levels.

Further illustrating this decline in the park is a 50 percent decline in the Roseate Spoonbill population since the 1980 census and a decline in the woodstork population from 2,370 nesting pairs in the 1960's to 374 pairs in 1987. Moreover, during the last 2 years there has been no production from woodstork nests, as the managed water level was too high for the adults to successfully retrieve fish to feed their young. During the 1980's the park has also witnessed a continuing decline in the alligator reproduction. In 1988, approximately 50 percent of the alligator nests were flooded and destroyed by surplus water deliveries.

The fish populations both in the marshes and estuaries are under stress and occur in much reduced densities. The Florida panther is under extreme stress with a total population within the State estimated as between 30 and 50. Within Everglades National Park, the panther population has declined from 7 known animals in 1987, to 4 in 1989, with only one male panther known to be remaining in the park population.

The bill as introduced provides authority to acquire pursuant to a State/Federal partnership approximately 110,000 acres of the Northeast Shark River Slough currently outside the park boundary, with the State donating 35,000 acres and the Federal Government acquiring 75,000 acres. The eastern portion of the Shark River Slough is critical to the efforts to mitigate the current damaging release of excess water to the park through the western portion of the Shark River Slough through structures adjacent to the current park boundary. It is our understanding that acquisition of the eastern portion of the Slough will allow the release of water over an additional 10 miles of wetlands where it historically flowed.

The restoration of the eastern portion of the Shark River Slough will also allow the restoration of the western portion of the Slough, thus significantly increasing traditional habitat conditions. Life in the park thrives on the traditional seasonal drainages from wetland to dryer land with pools of water, with the receding and exanding edges of wetness running the eastern and western boundaries the length of the Slough. Since 1962 water in the western portion has often been too deep, and the eastern portion has often been too dry. Wetlands, and variations in wetlands, are especially critical to life at the simpler end of the food chain, and for supporting reproduction of larger wildlife species.

The authorities provided by the bill under Subsection 102(c), Acquisition, are generally consistent with other legislation enacted for additions to the park system. Section 102(c)(1), provides that notwithstanding any other provi-

sion of law the Secretary may exchange approximately one acre of Federal land known as Gilberts Marina for non-Federal land of equal value within the boundaries of the proposed addition. This provision is necessary to resolve a longstanding trespass on Federal Wilderness, inadvertently constructed at least 12 years ago. The Department advocates a more aggressive effort of seeking "land donations" in the East Everglades, as much of this land is not suitable as homestead sites to the current owners.

Subsection 102(g) provides authority to the Secretary to utilize National Park Service land acquisition personnel and practice to assist the State in acquisition of environmentally sensitive lands outside the park addition but within the Kissimmee River/Lake Okeechobee/Everglades-Bid Cypress hydrologic basins. This authority was requesed by the State of Florida to supplement their land acquisition efforts. In essence, the Secretary, upon request of the Governor, would act as an agent for the State, utilizing State funds to purchase lands that are determined by the Secretary to be consistent with the Federal interest within the previously described hydrologic basins. In addition, the Department urges reciprocal assistance from the State to facilitate the costly and time consuming title and land surverys that will be required.

Subsection 103(c) of the bill reaffirms the prohibition on airboat use within Everglades National Park, however, existing private airboat use within the addition would be grandfathered in and phased out with the individual current owners. Airboats would be limited to marked trails.

Subsection 103(d) provides continued public access by commercial airboat operators within the proposed addition. The bill would authorize the Secretary to grandfather existing operators as concessioners under the Concessions Policy Act.

Subsection 103(e) of the bill directs the construction of a visitor center at Everglades City, Florida, in commemoration of the vision and leadership shown by Mrs. Majorie Stoneman Douglas in the protection of the everglades and Everglades National Park. Mrs. Douglas is well known in the United States for her outstanding conservation efforts and for her noteworthy book, "The River of Grass."

We recommend that this provision be deleted. Funding for such a facility is a lower priority than other pressing needs to rehabilitate existing NPS system facilities to protect the health and safety of park visitors. Should funding become available, we would prefer to construct such a visitor center under existing authority. This would provide flexibility in locating the facility to ensure that it would serve the greatest number of visitors with the least adverse impact on the park. If we build such a facility, we would be pleased to dedicate it to Mrs. Douglas.

Mr. Chairman, as noted at the beginning of my statement, we believe the bill should be amended in order to speed the restoration of a more natural water regime to

the park than is envisioned by the bill and to better meet our stewardship responsibilities.

Furthermore, we wish to bring to the attention of the Committee the distinction between management of a park and management of a preserve. A park is managed to provide adequate protection of the resources and to provide for their enjoyment by the public. Activities such as fishing, birdwatching, and canoeing are allowed, while hunting and trapping are prohibited unless specifically spelled out in the legislation establishing the unit. A preserve is also managed for the protection of resources but the range of permitted public activities to enjoy them is normally wider. For example, activities such as hunting may be permitted if they do not jeopardize the natural values. Should the Congress ultimately decide to designate this unit as a park, this action should be done with this in mind and that the public be fully cognizant of the distinction.

The planning process to implement this legislation, if enacted, will take into account the possible impacts on the Miccosukee and Seminole tribes in the area.

Finally, Mr. Chairman, the bill should be amended to provide for a more equitable division of the acquisition costs between the Federal government and the State than the present 80 percent Federal/20 percent State apportionment. As I outlined earlier there has been a substantial commitment of Federal funds for land acquisition in South Florida in recent years. Presently $10 million have been authorized to be appropriated to establish the Florida Panther Wildlife Refuge, and the Big Cypress Addition authorized by the last Congress will cost some $45 million. We estimate the Federal share under the 80/20 split to be $32 million. The Department currently has outstanding commitments valuing $55 million in the State of Florida. This is in the form of outright land acquisitions and exchanges. Therefore, given the current formula under the bill, the total Federal impact would add up to $87 million. Currently the FY 89 appropriation for Federal land acquisition for the entire national park system is $52 million. In order to seek a balance in the Federal allocation of dollars for resource protection we recommend that the formula be amended so that the State proportion be much greater than the current 20 percent. In fact, we strongly urge that the State pick up at least 50 percent of the total land acquisition cost of land not presently in public ownership and provide for the donation of all the land that is presently in public ownership.

Title II of the bill directs the Secretary to conduct a feasibility and suitability study of expanding and redesignating Fort Jefferson National Monument in the Dry Tortugas as Fort Jefferson National Park. We recommend that Title II be deleted. The normal management planning is adequate to assess growth and development in and around the Florida Keys and the documented impacts to Fort Jefferson's water quality, fisheries and reef tracts, and the

degree of protection provided to the marine resources and submerged cultural resources.

This concludes my prepared remarks, Mr. Chairman. I will be pleased to respond to any questions you may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 724, as reported.

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